IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.MC.No. 2105 of 2007()

CC.917/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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PETITIONER: 2ND ACCUSED:

KAREEM @ ABDUL KAREEM, S/O.MUHAMMED,
CHEMMAD, KOTTAKKAL, PUTHUR, MALAPPURAM DISTRICT.

BY ADV. SMT.SHAIMA .U.
SRI.SUNIL V.MOHAMMED

RESPONDENTS: STATE:

THE STATE OF KERALA REPRESENTED BY THE
SI OF POLICE, PATTAMBI POLICE STATION, THROUGH
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ALONG WITH CRMC NO.2108/07 AND OTHER CONNECTED CASES ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. Nos.2105, 2108,
2113 & 2117 OF 2007

Dated this the day of July, 2007

ORDER

The common petitioner is the 2nd accused in four different prosecutions - all pending before the learned Judicial Magistrate of the First Class, Pattambi. He faces indictment for various offences including the ones under Sec.380 of the IPC. There is a co-accused also which co-accused is now absconding as per the submissions of the learned counsel for the petitioner. In all these prosecutions, warrants of arrest issued by the learned Magistrate are chasing the petitioner. He did not appear before the learned Magistrate and that obliged the learned Magistrate to issue warrants of arrest against the petitioner.

2. According to the petitioner, he is absolutely innocent. According to him, there was no wilful absence or default on his part. The petitioner is willing to surrender before the learned Magistrate and co-operate with the further progress of the trial. But the petitioner apprehends that if he appears before the learned Magistrate and applies for bail, his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. The petitioner therefore prays that appropriate directions may be issued under Sec.482 and/or 438 of the Cr.P.C. in his favour.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before

the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

(R. BASANT, JUDGE)

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